

**Statement of  
FCC Commissioner Susan Ness  
before the  
Committee on Commerce, Science, and Transportation  
United States Senate**

**May 26, 1999**

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today.

I welcome a dialogue between the Commission and our authorizing Committee. In particular, I am pleased to review with you our performance over the past 18 months and our efforts to fulfill our statutory obligations under the Telecommunications Act of 1996 and other laws. I also welcome your guidance on the issues that are pending before us, on our efforts to promote competition, deregulation, and universal service, and on how we can best meet the challenges ahead.

This interaction between the Commission and our oversight Committee is especially valuable now, during a period of monumental change. The telecommunications and information industries are undergoing a transition of epic proportions. Digitization and Internet technology are splintering the regulatory structures of the past. Convergence is presenting an abundance of new opportunities -- and challenges -- as voice, data, audio and video are delivered over a host of new technologies. Ten years ago, data represented less than five percent of all telecommunications traffic. Today, data is surpassing voice traffic and in the near future will

represent the lion's share of traffic on our nation's telecommunications network. The Internet is moving at an astonishing clip to become integrated into the daily life of consumers, in ways that will profoundly change commerce in the 21st Century.

Demand for bandwidth is burgeoning, and a variety of players, embracing different technologies, are racing to be the provider of choice. Telephone companies are rolling out digital subscriber line services, and cable companies are offering cable modems, each spurring the other to deploy broadband faster and more extensively. Meanwhile, fixed and mobile wireless, satellites and even broadcast stations, are investing to expand consumer choices. The potential for consumer benefits is enormous, but the challenge for traditional regulatory paradigms is also substantial.

## **MANAGING THE TRANSITION**

The changes that are underway are attributable as much to technology as to law and regulation. They are also a product of the availability of capital, management skill, and entrepreneurship. But law is still a critical part of the equation. The right legal framework can stimulate investment, risk-taking, and competition; the wrong framework can delay and distort marketplace activity.

Recognizing an historic opportunity, and desiring to spur increased competition and

innovation, Congress passed the Telecommunications Act of 1996. The full consequences of that law and of the FCC's efforts to implement it can be measured only over a longer sweep of time than three years. And any given individual's assessment, at any point in time, will necessarily find both strengths and weaknesses in the various judgments that have been made. Still, I believe that the law generally is working successfully, especially now that most of the judicial challenges have been resolved. The nature and velocity of the marketplace developments that are now underway are unprecedented, and I believe that the vast majority of consumers will reap substantial benefits. Further, these benefits will increase as remaining market-opening difficulties are overcome, and competition expands its reach.

Congress has established clear goals, and the means to get there. The overarching goal is "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans . . . ." The primary tool is competition, which to varying degrees requires both regulation (see, e.g., 47 U.S.C. §251(c) (obligations of incumbent local exchange carriers) and deregulation (see, e.g., 47 U.S.C. §160) (forbearance)).

Thanks to decisions that predate the Telecommunications Act, we are already well along in the development of fully competitive and unregulated markets for long distance service, information services, customer-premises equipment, and wireless services. In these areas, choice is abundant, innovation is rampant, and prices are declining. Much of this progress has occurred fairly recently.

Consider: just three years ago most residential consumers paid 20 or 25 cents a minute for a long distance call. Today, 10-cent-a-minute (or even lower) rate plans are widely available, and special offers abound, such as all-you-can-talk pricing for weekends and free calls on Monday nights. (To be sure, not all consumers are reaping the benefits of lower prices. Some low-volume long distance consumers have been bombarded with additional charges and fees that exceed the savings in per-minute rates, which should be explored.)

In commercial mobile radio service, the benefits of competition have been even more dramatic. A few years ago, a wireless call commonly cost 50 to 75 cents a minute, and customers paid hefty roaming fees. But when the first PCS providers challenged the cellular incumbents, rates plummeted 25 percent. They dropped even further as the 4th, 5th, or even 6th operators joined the fray. And now we have "one-rate" pricing, where consumers are offered big "buckets" of minutes that equate to as low as 10 cents a minute -- and often with regional or national calling and no roaming fees. Now, it is often cheaper to make an intrastate toll call by wireless phone than over the wired telephone system.

Similarly, many international call prices have plunged as countries implement their World Trade Organization market-opening commitments, and as the FCC enforces its accounting rate policies. Virtually everyone who makes a significant volume of international calls has seen a significant drop in rates.

Competition has been more elusive in the video and local telephone markets, but even here there are signs of progress. With more than 10 million subscribers, DBS is becoming a more credible competitor to cable, and competitive local exchange carriers are making inroads against incumbent local exchange carriers in business markets and in a small, but growing number of residential markets as well.

In these markets, the challenge is to manage a successful transition from regulated monopoly to unregulated competition as we maintain our commitment to universal service.

This transition is complicated. New services and technologies are surfacing that do not fit neatly into discrete regulatory structures. This leads both to creative tensions, and to certain anomalies.

We need to remember that the development of full competition takes time. Just as we saw in the long distance market, and more recently with wireless services, there is often a gestation period of multiple years between the time when key steps are taken to promote competition and when robust competition actually emerges. This is particularly true when unnecessary litigation prolongs uncertainty, and deters investment.

As we seek to accelerate the transition to competition, we need to be willing to trust the

market to work, as we did when we denied state petitions to retain price regulation of commercial mobile radio services. But we also need to be careful not to undermine basic tenets of the Telecommunications Act. Sometimes, when we hear pleas to restrict or eliminate a particular requirement, the provision in question is one that Congress carefully chose as a tool to enable competition (see, e.g., 47 U.S.C. §§ 251(c)(obligations of incumbent local exchange carriers), 271(Bell entry into long distance), 628 (program access)). It may even be a provision that Congress specifically told us *not* to use our forbearance authority to circumvent (47 U.S.C. §160(d) (referencing §§251(c) and 271)).

We also need to think with greater care about the layers of regulation that can flow from different levels of government. An incumbent or a new entrant may need to deal not only with the requirements of the Communications Act and the FCC, but also with state and local laws and regulations. Each layer of government has its own responsibilities, and its own legitimacy, but where possible we need to strive for cooperation, consistency and efficiency, to advance the national goals of competition, universal service, and deregulation.

We have made considerable progress working with our state and local government colleagues in a renewed spirit of cooperation. Our partnership with the state commissioners, in particular, is vastly stronger than it was when I joined the Commission in 1994. Our local and state government advisory committee has also made significant progress by identifying practical solutions to thorny issues such as wireless antenna siting.

## **GUIDING PRINCIPLES**

As we move forward with our implementation of the Telecommunications Act, and with an evolution in the philosophy and structure of the FCC, I am guided by certain principles:

First and foremost, of course, I take my direction from the law. It is not my place to second-guess the judgments of Congress, or to be selective in deciding which provisions of the law will be enforced.

The law, however, leaves us a measure of discretion, and in exercising that discretion our principal goal should be to foster competition whenever and wherever possible. And as competition advances, regulation can and should retreat. Thus, we must more boldly rely on marketplace solutions, rather than the traditional regulation of entry, exit, and prices; and on surgical intervention rather than complex rules in the case of marketplace failure. The forbearance authority which you gave us is an excellent tool, sunset provisions are another, as is the biennial review process.

Another principle is that we should minimize regulatory risk. Capital formation is hampered when rule changes are pending or are uncertain. Rules and decisions should be as clear and as consistent as possible. Decisions -- whether in resolving rulemakings or complaints or simply in processing routine applications -- need to be prompt and predictable. Enforcement

should be swift and certain, so that regulatory delay is not a strategy of choice, a hindrance to market entry, or an impediment to protecting consumers against inappropriate conduct by service providers.

In addition, government often serves best by focusing a spotlight on problems, and prodding parties to work together to design solutions. Sometimes government can be a useful catalyst for private sector solutions that serve better than regulatory prescription to resolve competing needs and speed the introduction of new technologies.

Another basic tenet is that consumer interests should be paramount. It is the public, not any particular competitor or group of competitors, that we must serve. The Commission should not try to pick winners or losers, either individually or by industry sector. Nor should we be tempted by short-term "fixes" that impede long-term objectives.

Finally, we should continually review our progress. It is important to evaluate, regularly and periodically, what is working and what is not -- especially in such a rapidly changing environment -- and then take steps to fix it. I do not advocate another major rewrite of the Communications Act at this time, for such a reopening of the statute would reintroduce uncertainty and deter investment.

With this as backdrop, I want to elaborate on Commission activity over the past 18 months in five areas.



## **Digital Television**

Effectuating a successful transition to digital television for the benefit of consumers is an important Commission goal. Notwithstanding the growth of other media delivery systems, such as cable, DBS and the Internet, free, over-the-air television remains unparalleled in its pervasiveness and influence. Local broadcasters have been given the opportunity to participate in the digital revolution that is affecting every other segment of the communications and information industries. By the same token, consumers should have the opportunity to enjoy the numerous benefits -- HDTV, multi-channel standard definition TV, and a host of ancillary and supplemental services -- that DTV broadcasting can bring.

The transition to digital is no simple matter, and no one should expect an overnight success. While I am encouraged by the progress that has been made to date, much remains to be done.

The good news is that 75 stations are already on the air, which is ahead of the FCC-prescribed implementation schedule. But many problems -- both technical and regulatory -- remain which are hindering a successful transition for industry and for consumers. We still need a greater quantity of innovative programming that will attract DTV viewers, and more affordable DTV receivers to attract more DTV programming (the "chicken-and-the-egg problem"). We need the industry to resolve its knotty digital copyright issues so that compelling programming can be

shown. We need better compatibility between digital cable service and DTV receivers. And we need even greater accommodation between cable operators and television broadcasters.

My strong preference is for market-driven solutions to these problems, whenever possible. The Commission's role is primarily to highlight obstacles, facilitate dialogue among the stakeholders, and to guide, prod, shepherd, cajole, jawbone, and otherwise stimulate the development of solutions. Regulation is the tool of last resort, and any prescriptive (or proscriptive) intervention should be carefully thought through and proportionate to the circumstances.

### **Universal Service**

Another high priority is universal service. Again there is good news, and again there is much unfinished business.

The Telecommunications Act of 1996 strengthened our nation's commitment to an inclusive vision in which communications services are available to *all* Americans. The new law reaffirmed long-standing policies of assisting low-income consumers, and those in high-cost areas, in obtaining access to high-quality, affordable telephone service. The new law also extended the concept of universal service by providing for targeted assistance to elementary and secondary schools, libraries, and rural health care providers. I am deeply committed to all of our universal service goals.

The good news here is that the low-income support mechanism has been maintained and expanded, that consumers in high-cost areas are continuing to obtain high-quality services at affordable rates, and that we have launched the schools and libraries and rural health care support mechanisms. Each of these elements of universal service is important; all of them, collectively, will help to build stronger communities, a stronger economy, and a brighter future for our nation.

The high-cost issues are extraordinarily complex and require special care. The Telecommunications Act is clear that we should not disrupt the ability of rural telephone companies -- some 1300 strong -- to serve their communities. We have followed that guidance and largely left rural telcos "off the table" for purposes of pending proceedings. In addition, the Federal-State Joint Board on Universal Service has appointed a Rural Task Force that is studying these issues. But as you know, we are proceeding with caution, consistent with your guidance.

Even with the larger telephone companies, where more of the subsidies that keep rural rates affordable are implicit and therefore potentially vulnerable to erosion by competition, we are moving ahead with care. The risk of introducing unintended consequences is great. The challenge is to reform high-cost support mechanisms in a way that ensures that consumers will continue to have access to affordable, quality telecommunications services while being economically efficient, compatible with competition, and fair to both high-cost and low-cost states.

We want to avoid unnecessary complexity or artificiality. We want to target support to the areas where costs are truly high. We want to avoid treading on the toes of state regulators, who (in the case of the larger telephone companies) are the ones that manage most of the implicit subsidies that keep rural phone rates affordable today. We want to avoid locking in legacy systems or hindering the emergence of new technologies and new competition. We want to avoid creating both the reality and the appearance of rate increases.

And candidly, it is not clear how best to effectuate all of these goals simultaneously. Provided that consumers in high cost areas are continuing to enjoy access to telecommunications services at affordable and reasonably comparable rates, we can and should incrementally make explicit the implicit subsidies between carriers.

Obviously, high cost mechanisms will continue to require a great deal of time and effort within the Commission, working closely with the Joint Board. But in the meantime, it is important for you to know that we are not reducing the support that is currently provided by the interstate jurisdiction; indeed, we are actively exploring ways to target additional federal support where it is needed. Further, the Joint Board has found that preexisting sources of implicit subsidy are not at this time being eroded. It helps a great deal that communications is a declining cost business and that demand for communications services is soaring, so despite some inroads made by competitors, the incumbents are continuing to grow and prosper.

## **Broadband Deployment**

I am personally committed to enabling all Americans to benefit in the communications revolution. As advanced services are rolled out, I want to ensure that rural America is included.

Broadband services are more than just a means of enabling people to communicate more productively. They may provide the means by which to stem the tide of migration from the farms to the cities. They may enable entrepreneurs to remain in rural areas and develop prosperous businesses, boosting local economies. To this end, it is important that existing wireline carriers, cable companies, and new wireless and satellite ventures alike have the opportunity to bring new services, new choices, and new life to rural communities.

We are still at an early stage in the rollout of broadband services, but early indications are that investment and innovation are strong, and that rural areas are not being neglected. We will, of course, keep a close eye as events continue to unfold.

## **International Issues**

Over the past eighteen months, the FCC has played a major role in expanding access to global communications at affordable rates. We have achieved some real successes in our efforts to drive international accounting rates closer to costs (and in winning a major judicial victory on this issue), and in opening global markets to competition under the WTO framework. Many countries have emulated the U.S. model by establishing independent regulators patterned after the

FCC.

Unfinished work includes continued enforcement of our accounting rate policies as we press for an acceptable multilateral resolution of this issue. We must also continue to be proactive with our trading partners to achieve full WTO compliance where U.S. companies are encountering market-access difficulties. And we must deploy the resources necessary both to complete WRC 2000 preparation process and to engage in meaningful and frequent negotiations with our trading partners sufficiently in advance of the Conference on the full range of spectrum issues that will be addressed. I am encouraged that regional bodies charged with developing spectrum management policies are opening up their processes. More regular bilateral discussions with our trading partners on spectrum management issues could serve to facilitate cooperative and timely resolutions of many of these issues.

### **Spectrum Management**

Surging demand for commercial use of the finite spectrum resource, both internationally and in the U.S., coupled with the technical complexities inherent in sharing spectrum, are propelling us to take a fresh look at our spectrum management policies. As global communications systems and terrestrial wireless networks proliferate, they often are competing for use of the same spectrum. Where feasible, there may be value in harmonizing spectrum allocation and assignment policies with our trading partners, particularly to implement global systems.

As the demand for spectrum grows, the supply of useable spectrum shrinks. Consequently, we need to review our spectrum management policies to ensure that they provide incentives for private sector development of efficient spectrum use technologies. I am intrigued by the discussion at our recent *en banc* on spectrum management of software-defined radios as one way to increase both flexibility and efficiency of use.

## **"REINVENTING" THE FCC**

As the marketplace changes, so too must the FCC. The Commission must continue to evaluate ways in which we can be more efficient and responsive. A process to do that is currently underway, and a dialogue with our authorizing Committees is obviously vital to the decisions that must be made.

Two months ago, Chairman Kennard released his draft report, "A New Federal Communications Commission for the 21st Century." This report provides an excellent starting point for any discussion of FCC organization and mission. The Chairman has also sought public discussion by arranging three forums (the first of which was held on May 20). Each of my colleagues has proffered thoughtful suggestions for streamlining and improving FCC performance.

In the meantime, we must not permit ourselves to be diverted from the matters at hand. We do have unfinished business, and many market participants need to have timely resolution of

issues that are pending before us. In this context, I am most grateful for the recent statements of the Majority Leader that “Congress should start empowering the FCC rather than criticizing its individual decisions” and of my colleague, Commissioner Michael Powell, who accurately observed, “The agency cannot right its ship if stakeholders spend most of their time rocking the boat.”

## **CONCLUSION**

Consumers are already reaping many benefits from competition fostered by past decisions of Congress and the FCC. The Telecommunications Act and its implementation by the FCC and the state commissions are expanding the realm of competition, and expanding the potential for consumer benefits. Yet the pace of change in communications markets is still accelerating, and care must be taken to ensure that national goals remain in focus.

The FCC's main challenges during this historic transition are to know when to intervene and when not; to use creatively and judiciously the wide assortment of tools available as we move from monopoly to competition; and, at all times, to keep the interest of consumers paramount. Only then will we be fulfilling Congress' vision of competition and deregulation for the benefit of all Americans.

Thank you very much for inviting me to testify before you today. I am happy to answer your questions.



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Federal Communications Commission**

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I want to elaborate on Commission activity in five areas:

- (1) Effectuating a successful transition to *digital television* for the benefit of consumers is an important Commission goal. While I am encouraged by the progress that has been made to date, much remains to be done.
- (2) Another high priority is *universal service*. The low-income support mechanisms have been maintained and expanded, the schools, libraries and rural health care support mechanisms are in place, and consumers in high-cost areas are continuing to obtain high-quality services at affordable rates, as we move ahead cautiously, but resolutely, to transition that support for a competitive marketplace.
- (3) As *advanced broadband services* are rolled out, we need to ensure that all Americans, including those in rural areas, have an opportunity to participate in the digital revolution. It is important that existing wireline carriers, cable companies, and new wireless and satellite ventures alike have the opportunity to bring new services, new choices, and new life to rural communities.
- (4) On the *international* front, we have achieved some real successes in our efforts to drive international accounting rates closer to cost, and in opening global markets to competition under the WTO framework. Unfinished work includes continued enforcement of our accounting rate policies as we press for an acceptable multilateral resolution of this issue; proactive efforts to ensure that our trading partners achieve full WTO market opening compliance; and investing the resources necessary both to complete WRC 2000 preparation process and to engage in meaningful and frequent negotiations with our trading partners sufficiently in advance of the Conference.
- (5) Surging demand for spectrum coupled with advances in technology prompt a review of our *spectrum management* policies to ensure that they maximize both flexibility and efficiency for the benefit of the American public.